IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 31ST JULY 2007 / 9TH SRAVANA 1929

WP(C).No. 23363 of 2007(F)

AGAINST THE ORDER DATED 26/06/2007 IN IA 2849/2007 IN AS.77/2004 of PRL.SUB COURT,TRIVANDRUM

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PETITIONER:

PARAMESWARAN NAIR @ BABU,
S/O. BHASKARAN NAIR, SHIBI BHAVAN,
NATTAYIKONAM, THIRUVANANTHAPURAM, DOING BUSINESS AS THE PROPRIETOR OF M/S. LEKSHMI FINANCE,
KAZHAKKUTTOM, THIRUVANANTHAPURAM.

BY ADV. SRI.P.RADHAKRISHNAN (1)
SRI.MADHU RADHAKRISHNAN
SRI.K.R.KRISHNA KUMAR

RESPONDENTS:

HARIKUMAR K.S., S/O. KRISHNAMURTHY,
RESIDING AT PUSHPAMANGALAM, TC 2/1075,
ARYA CENTRAL SCHOOL LANE, PATTOM,
THIRUVANANTHAPURAM, NOW RESIDING AT ATHIRA,
KARUKULAM PALAM JN., KARAKULAM P.O.,
THIRUVANANTHAPURAM.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 31/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.K.DENESAN, J.

WP(C)No.23363 OF 2007 F

Dated this the 31st July, 2007.

JUDGMENT

This writ petition is filed challenging the order of the Principal Subordinate Judge, Thiruvananthapuram in I.A.2849/07 in A.S.77/04. The said application was filed by the appellant in the case for reception of two documents. The documents sought to be produced are (1) trade licence with translated copy and (2) Establishment Contract with translated copy. The plaintiff filed the suit for recovery of the amount and as he did not succeed in proving the subject matter by production of cogent documents the court below dismissed the same. It is against that decision the appeal is filed. Learned counsel for the writ petitioner rightly contends before me that Order XLI Rule 27 does not enable any party to automatically produce document at an appellate stage. Under Rule 27(1)(aa) the party has to establish that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after exercise of due diligence, be produced by him at the time when the decree appealed against was passed. A perusal of the judgment of the court below would reveal that these two documents are really essential if they are genuine for the purpose of disposal of the case. It is true that there are

laches. But when the court below feels that such document is necessary in order to enable it to pronounce the judgment or it is necessary for any other substantial cause Order XLI Rule 27(b) permits the court to entertain the application for reception of documents. It is true that it is the lawyer who has filed the application and not the client. The reason is that the client is working abroad. Whatever it may be, I feel an opportunity shall not be denied if really the documents are necessary for a proper adjudication of the dispute between the parties. The learned Subordinate Judge has penalised the petitioner for belated production of documents by directing payment of cost of Rs.2,500/-. Therefore, I do not want to interfere with the discretion exercised by the court below under Order XLI Rule 27 CPC. But I make it very clear that just because documents are tendered it will not ipso facto be conclusive but the said document has to be proved by methods known to law and only on proof of the same there can be any reliance placed on these documents. Writ petition is disposed of accordingly.

M.N.KRISHNAN
Judge

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